

1937

## c 197 Master and Servant Act

Ontario

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## CHAPTER 197.

## The Master and Servant Act.

## INTERPRETATION.

Interpreta-  
tion.

"Wages."

1. In this Act, "wages" shall mean and include wages and salary whether the employment in respect of which the same is payable is by time or by the job or piece or otherwise. 1935, c. 38, s. 2.

## LIMIT OF DURATION OF CONTRACT.

Limitation  
of voluntary  
contract of  
service or  
indenture.

2. No voluntary contract of service or indenture entered into by any persons shall be binding on them, or either of them, for a longer time than a term of nine years from the date thereof. R.S.O. 1927, c. 177, s. 1.

## PROFIT-SHARING AGREEMENT.

Agreement  
for share in  
profits of  
business.

3.—(1) An agreement entered into by a workman, servant or employee and his master or employer under which a share of the profits of any trade, calling, business or employment is to be paid to the workman, servant or employee in lieu of or in addition to salary, wages or other remuneration unless the agreement otherwise provides or a contrary intention may be reasonably inferred therefrom shall not,—

- (a) create any relation in the nature of a partnership or the rights or liabilities of partners; or
- (b) give to the workman, servant or employee the right to examine into the accounts or interfere in the management or affairs of the trade, calling or business.

Employer's  
statement of  
profits to be  
final.

(2) Any statement or return by the employer of the net profits of the trade, calling, business or employment on which he declares and appropriates the share of profits payable under such agreement shall be final and conclusive between the parties and all persons claiming under them, and shall not be impeachable upon any ground whatever, except fraud. R.S.O. 1927, c. 177, s. 2.

## COMPLAINTS FOR NON-PAYMENT OF WAGES.

4.—(1) Upon the complaint upon oath of a servant or labourer against his master or employer concerning any non-payment of wages a justice of the peace may summon the master or employer to appear before him at a reasonable time to be stated in the summons, and he or some other justice upon proof on oath of the personal service of the summons, or of its service as hereinafter authorized, shall examine into the matter of the complaint, whether or not the master or employer appears, and upon due proof of the cause of complaint the justice may discharge the servant or labourer from the service or employment of the master or employer, and may direct the payment to him of any wages found to be due, not exceeding the sum of \$100, and the justice shall make such order as to him seems just and reasonable for the payment of such wages, with costs, and in case of the non-payment of the same, together with the costs, for the space of eight days after the order has been made the justice shall issue his warrant of distress for the levying of the wages, together with the costs of the order and of the distress.

Complaints  
by servants  
for non-  
payment  
of wages.

(2) A complaint may be prosecuted and determined in any county or district in which the person complained against is found, or in any county or district in which the person complained against carries on business.

Where  
complaints  
may be  
prosecuted.

(3) Proceedings may be taken under this Act within one month after the engagement or employment has ceased, or within one month after the last instalment of wages under the agreement of hiring has become due, whichever shall last happen.

Time within  
which pro-  
ceedings may  
be taken.

(4) Proceedings may be had for non-payment of wages in respect of service or labour performed in Ontario upon a verbal or written agreement or bargain made out of Ontario.

Work done  
in Ontario  
under  
agreement  
made out of  
Ontario.

(5) Where the master or employer claims a set-off or makes a claim for unliquidated damages the justice of the peace shall investigate the same and give judgment for the balance of wages, if any, due to the claimant after deducting such set-off or claim.

When master  
claims  
set-off.

(6) The justice of the peace shall not have jurisdiction to adjudicate upon a set-off or claim exceeding the claim for wages except to the extent of the wages. R.S.O. 1927, c. 177, s. 3.

Limit of  
jurisdiction  
as to set-off.

5. Where the proceedings are taken before a magistrate, and payment of wages is ordered by him to be made by the master or employer to the servant or labourer, and the same

Additional  
remedy in  
cases before  
magistrate.

are not paid within the time limited by the order, the same proceedings may be taken by the person claiming the benefit of the order as may be taken by a party having an unsatisfied judgment or order in a division court for the payment of any debt, damages or costs, as respects the examination of the judgment debtor touching his estate and effects, the means he has of discharging his liability, and the disposal he has made of any property, and the magistrate shall have the like power and authority to enforce payment of the debt as are possessed by a judge of a division court in like cases, and the practice and proceedings thereon shall be the same as nearly as may be and have the same effect as provided in *The Division Courts Act* with respect to judgment debtors. R.S.O. 1927, c. 177, s. 4.

Rev. Stat.  
c. 107.

Limit of  
time for  
payment.

6. Subject to the provisions of section 8 the magistrate may name in the order for payment of wages such time, not exceeding twenty-one days, as to him may seem just and reasonable for the payment of the same and costs, and in case of non-payment within such time the complainant shall be entitled to take forthwith the proceedings for enforcing payment herein provided. R.S.O. 1927, c. 177, s. 5.

Procedure  
upon order of  
magistrate.

R. S. C.  
c. 36.

7. Where an order is made under this Act by a magistrate for the payment of money, such order may be proceeded upon and enforced in the manner provided by section 739 of the *Criminal Code* and the said section shall apply as if the same were set out and enacted herein. 1929, c. 23, s. 9; 1933, c. 59, s. 20.

Jurisdiction  
of magistrate  
in cities.

Rev. Stat.,  
c. 200.

8.—(1) In the case of wages due to any mechanic, labourer or other person in respect of work of the character mentioned in section 5 of *The Mechanics' Lien Act* the jurisdiction of a magistrate of a city under this Act shall extend to wages for thirty days, or for a balance equal to the wages for thirty days, though the same or the balance thereof exceed the sum of \$100.

Where no  
specific rate  
of wages  
agreed on.

(2) Where no specific rate of wages has been expressly agreed to between the parties, the magistrate of a city may order payment of the wages, reckoning the amount thereof according to the current rate of wages in the city in like cases, or according to what may appear to be a just and reasonable allowance.

Order for  
payment  
of wages;  
enforcing.

(3) The order shall direct payment of the wages to be made forthwith, and a warrant of distress shall be issued accordingly, unless the master makes oath, and the magistrate believes, that the master is unable to make the payment forthwith, and expects to be able to pay and intends to pay the



same within the time given, and unless also the magistrate considers the proposed delay to be under the circumstances reasonable, and the magistrate, if he sees fit, may order security to be given as a condition of delay.

(4) In case of an adjournment at the instance of the master the same shall be on payment for the claimant's time in attending the court, the amount to be fixed by the magistrate, and such payment shall be made forthwith unless the magistrate sees reason for dispensing with immediate payment. Adjournment at instance of master.

(5) The order for payment may be filed in that division court which would be the proper court for bringing an action for the wages, and on such filing the order shall become a judgment of such division court and may be enforced as a judgment of that court. R.S.O. 1927, c. 177, s. 6. Enforcement in division court.

#### SERVICE OF SUMMONS.

9.—(1) Every summons issued under this Act against an individual, firm or corporation, and every subsequent paper or proceeding in the action or proceeding in which the summons has been issued may be served, except in the cases provided for by subsection 2, upon the person to whom it is directed either by delivering it to him personally or, if he cannot conveniently be found, by leaving the same for him at any place where such individual, firm or corporation carries on business, within the county or district in which the justice of the peace issuing the summons has jurisdiction, with some adult person employed in the office or place of business of such person. Service of summons, etc.

(2) In cases against railway, telegraph, telephone or express companies every such summons and other papers may be served on any agent of the company whose office or place of business as such agent is within such county or district, and for the purposes of this section the word "agent" shall include,— Service on certain public companies.

- (a) in the case of a railway company, a station master having charge of a station belonging to the company;
- (b) in the case of a telegraph company, a person having charge of a telegraph office belonging to the company;
- (c) in the case of a telephone company, a person having charge of a telephone office belonging to the company; and

(d) in the case of an express company, a person having charge of an express office belonging to the company.

Effect of  
service under  
this section.

(3) Service as authorized by this section shall have the same effect as personal service. R.S.O. 1927, c. 177, s. 7.

#### APPEALS.

Mode of  
appeal.

**10.**—(1) An appeal from an order for the payment of wages, or order of dismissal from service or employment, or against any decision of any justice of the peace or magistrate under this Act shall be made to the division court of the division in which the cause of action arose or in which the party or parties complained against, or one of them, resided at the time of the making of the complaint, or to the division court holden in the division in which the party or parties complained against or one of them carried on business, and in case of dismissal of the appeal, or affirmance of the order or decision, the court appealed to shall enforce the order for payment of wages or of dismissal, and for the payment of the costs awarded, and shall, if necessary, issue process for carrying such judgment into effect. R.S.O. 1927, c. 177, s. 8 (1).

Appeal.

(2) The appeal shall be taken within the time and as nearly as may be, in the manner provided by *The Summary Convictions Act* as to appeals to a county or district court, and the proceedings upon and incidental to the appeal and subsequent thereto shall, except as provided by subsection 1 and by section 11, be the same as nearly as may be, as in the case of an appeal under *The Summary Convictions Act*. 1937, c. 72, s. 35.

Rev. Stat.,  
c. 136.

Trial with  
or without  
jury.

**11.**—(1) The appeal may be tried with a jury if the appellant files with the clerk of the court within ten days after the order or decision a notice requiring a jury, or if the respondent within four days after the service of the notice of appeal upon him files a notice with the clerk requiring a jury, and if the proper fees are in either case deposited with the clerk; otherwise the judge may try the appeal without a jury or may summon a jury from the body of the court as to him seems meet.

Time and  
place for  
hearing  
appeals.

(2) Upon the application of either party when a jury is not required the judge may try the appeal at such time and place as he may appoint, and upon such notice as to him seems reasonable. R.S.O. 1927, c. 177, s. 9.

## AGREEMENTS WAIVING ACT.

**12.**—(1) Every agreement or bargain, verbal or written, expressed or implied, on the part of any workman, servant, labourer, mechanic, or other person employed in any kind of manual labour intended to be dealt with in this Act whereby it is agreed that this Act shall not apply, or that the remedies hereby provided shall not be available for the benefit of any person entering into such agreement, is hereby declared to be null and void and of no effect as against any such workman, servant, labourer, mechanic, or other person.

Contracts  
waiving  
application  
of Act to  
be void.

(2) This section shall not apply to any manager, officer or foreman or to any other person whose wages are more than \$5 a day. R.S.O. 1927, c. 177, s. 10.

Section not  
to apply to  
certain  
persons.

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